

Maurer School of Law: Indiana University  
**Digital Repository @ Maurer Law**

**Indiana Law Journal**

Volume 4 | Issue 6

Article 6

3-1929

# Sources of the Constitution of the United States of American, by Ellis Stevens

Ivan M. Stone

*University of Illinois*

Follow this and additional works at: <http://www.repository.law.indiana.edu/ilj>

 Part of the [Constitutional Law Commons](#), and the [Legal History Commons](#)

## Recommended Citation

Stone, Ivan M. (1929) "Sources of the Constitution of the United States of American, by Ellis Stevens," *Indiana Law Journal*: Vol. 4: Iss. 6, Article 6.

Available at: <http://www.repository.law.indiana.edu/ilj/vol4/iss6/6>

This Book Review is brought to you for free and open access by the Law School Journals at Digital Repository @ Maurer Law. It has been accepted for inclusion in Indiana Law Journal by an authorized administrator of Digital Repository @ Maurer Law. For more information, please contact [wattn@indiana.edu](mailto:wattn@indiana.edu).



**JEROME HALL LAW LIBRARY**

INDIANA UNIVERSITY  
Maurer School of Law  
Bloomington

## SOURCES OF THE CONSTITUTION OF THE UNITED STATES

Sir Henry Maine, writing in his *Popular Government*, has said that "The Constitution of the United States is a modified version of the British Constitution, but the British Constitution which served as its original was that which was in existence between 1760 and 1787. The modifications introduced were those, and those only, which were suggested by the new circumstances of the American colonies, now become independent."

This is, in the main, the position advanced and ably defended by Stevens' *Sources of the Constitution of the United States*,—the thesis that a predominant majority of the constitutional principles, practises, and usages which were enunciated by the Constitution in 1787 was the direct result of our English ancestry. The colonists were largely of English extraction. They had lived for a relatively long period of time under English colonial rule and knew little that was not fundamentally of English origin,—whether it be habits, common law, or government. That the point of view here put forth by Stevens is not dead is evidenced by the fact that the book, first published in 1894, has only within the last few months been reissued by Macmillan and Company.

The Revolution, contends Stevens, wrought little change in the fabric of government in the individual colonies. Even in the national governmental system were preserved many fundamental principles found in the English system, namely, separation of powers, a supreme judiciary, and a central legislature with broad powers. Stevens notes the strong leanings of the colonial fathers to Montesquieu's *Esprit des Lois*, but he hastens to explain, and rightly, that Montesquieu's well known work was the result of long observation of the English system in operation. As for the Bill of Rights, adopted as amendments to the Constitution of 1787, the author carries forward the same general line of argument, showing that, with a few enumerated exceptions, the great guarantees there announced were based on long-standing English custom or had long been incorporated in the English common law.

---

*Sources of the Constitution of the United States.* By C. Ellis Stevens. The Macmillan Company, New York. Second Edition, Revised and Enlarged, 1894. Reissued, September, 1927. Pages xx, 313. Price \$2.00.

No one will deny the appropriateness of a thorough, well documented, historical study into the sources of the United States Constitution such as this product of Dr. Stevens' mind and pen. However, the book will not appeal to those who gather supreme delight in twisting the British lion's tail and certainly will bring no comfort and peace of mind to the mayor of a certain widely advertised American metropolis! But these are objections due to prejudices that can here be disallowed. Neither will this treatment satisfy those bent upon "emphasizing the essential originality of American institutions, and seeking to minimize the derivative elements."

On the other hand, there are those who will discount the author's findings, not because of method of treatment but because of alleged misplaced emphasis in reaching the conclusions recorded. This school, if such it may be denominated, is represented by no less an authority than Professor Robert Livingston Schuyler of Columbia University, who, writing in the March, 1928, issue of the *Harvard Law Review*, feels that Stevens has "greatly over-rated the influence of the eighteenth century English constitution upon the members of the federal convention . . ." This point of view is elaborated somewhat more at length in Professor Schuyler's admirable little volume, *The Constitution of the United States*, where the author seems prone to believe that the constitutional fathers borrowed more from the governmental experience of the American colonies and of the Confederation than from England and the English constitution directly. To this conclusion Stevens would reply that "While the institutions of the American colonies arose in many instances as if by accident, the fact that the colonies generally agreed in essentials with each other and with the parent nation cannot, of course, be scientifically explained as accidental or as the result of invention. . . . it is a characteristic of the race both in England and America that it has never really broken with the past." (Preface, pp. xvi, xvii.)

In fairness to Dr. Stevens it should be said that he does not contend that the American Constitution has been derived exclusively from the English source. To so contend, in the words of Professor William C. Morey, "would be to ignore the political sagacity which the American people have shown from the first, both in the adaptation of foreign institutions and in the development of new constitutional features to meet the peculiar circumstances in which they have been placed." Nevertheless, this does not alter the fundamental thesis of the book that the American Constitution is "heir of all the ages" of English history, and that the American contribution has been not so much one of originality as of careful handling and successful adaptation of English constitutional principles to the new and changing conditions to be found on this side of the Atlantic.

It is unfortunate that in the reissue the book has not been brought up to date. It is a bit disheartening, for example, to

find in the appendix a copy of the Constitution as of 1870, and not including the 16th, 17th, 18th and 19th Amendments. Regardless of whether or not the reader will agree with the emphasis laid and the conclusions reached by Dr. Stevens, the book shows sound and serious scholarship, and his conclusions cannot be lightly disregarded.

*University of Illinois.*

IVAN M. STONE.